

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO CINCPAC HONOLULU HI

C O N F I D E N T I A L STATE 238932

E.O. 11652:GDS

TAGS: PFOR, RP

SUBJECT: PHILIPPINE REQUEST FOR IMMUNITY

CINCPAC FOR POLAD

1. PHILIPPINE EMBASSY PRESENTED NOTE NOVEMBER 20, 1973, REQUESTING DEPARTMENT ASSISTANCE IN ESTABLISHING IMMUNITY IN CONNECTION WITH LAW SUIT FILED AGAINST EMBASSY, AS AGENT FOR RICE AND CORN ADMINISTRATION, BY ALORA COMPANIA NAVIERA AS OWNERS OF VESSEL SS PHOLEGANDROS. SUIT SEEKS COURT HEARING DECEMBER 7 TO COMPEL ARBITRATION CONCERNING PAYMENT OF DEMURRAGE CHARGES OF ABOUT DOLS 8,500 INCURRED IN CARRYING 20,000 TONS OF CORN BOUGHT BY RICE AND CORN ADMINISTRATION IN OCTOBER 1971, UNDER CONTRACT SIGNED BY AMBASSADOR ROMUALDEZ. EMBASSY ARGUES THAT IT IS NOT PROPER PARTY TO BE SUED SINCE RCA IS AGENCY RESPONSIBLE, AND THAT IN ANY CASE IT IS IMMUNE FROM SUCH SUITS.

2. DEPARTMENT OFFICIALS INCLUDING LEGAL OFFICER MET NOVEMBER 27 WITH MINISTER BELISARIO AND ECONOMIC OFFICER TOLETE TO EXPLAIN U.S. POSITION, AS FOLLOWS. SINCE 1952 U.S. AS FOLLOWED RESTRICTED THEORY OF IMMUNITY, FOR BOTH ITSELF
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AND OTHER GOVERNMENTS, HOLDING THAT A GOVERNMENT IS IMMUNE

WHEN ACTING IN SOVEREIGN CAPACITY BUT NOT WHEN ACTING IN PRIVATE OR COMMERCIAL CAPACITY. COPY OF MAY 19, 1952 LETTER FROM ACTING LEGAL ADVISER TATE TO ACTING ATTORNEY GENERAL PERLMAN, SETTING FORTH THIS POSITION, GIVEN TO BELISARIO.

3. LEGAL OFFICER EXPLAINED THAT DECISION ON IMMUNITY CUSTOMARILY BASED ON ARGUMENTS PRESENTED BY REQUESTING POWER, NORMALLY IN LEGAL MEMORANDUM SUBSEQUENTLY REVIEWED IN CONFERENCE. IF DEPARTMENT SUGGESTS IMMUNITY TO COURT, REQUESTING FOREIGN STATE'S ATTORNEY MUST THEN ASK DISMISSAL OF CASE. A NOTE PRESENTING DEPARTMENT'S POSITION SENT TO EMBASSY DECEMBER 3.

4. IN MAKING PRESENTATION, DEPTOFFS STRESSED IMPORTANCE IN ANY EVENT OF EMBASSY'S EMPLOYING AN ATTORNEY, AND EXPLAINED CAREFULLY FACTORS WHICH MIGHT PRECLUDE SUGGESTING IMMUNITY IN THIS CASE. LEGAL OFFICER NOTED THAT IN PRACTICE WHEN DEPARTMENT SUGGESTS IMMUNITY COURT CUSTOMARILY ACCEPTS THAT VIEW BUT THAT PLAINTIFFS FREQUENTLY APPEAL, LEADING TO EXTENDED LITIGATION AND ILL FEELING. HE SUGGESTED, ALSO, THAT PLAINTIFF IN PRESENT CASE MAY HAVE BEEN MOTIVATED TO COURT ACTION BY DIFFICULTY IN OBTAINING RESPONSE FROM RICE AND CORN ADMINISTRATION, WHICH BELISARIO HIMSELF POINTED OUT HAS BEEN DISSOLVED AND SUCCEEDED BY NATIONAL GRAIN AUTHORITY.

5. EMBASSY MAY, IF OCCASION ARISES, EXPLAIN U.S. POSITION AS OUTLINED. DEPARTMENT HOPES IT WILL BE POSSIBLE OBTAIN SATISFACTORY RESOLUTION WITHOUT CREATING MUTUAL EMBARRASSMENT AND ILL-FEELING THAT CAN RESULT IN IMMUNITY CASES.

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